

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of Lodi Gas Storage, L.L.C., Western Hub Properties L.L.C., and WHP Acquisition Company, LLC, to Transfer Control of Lodi Gas Storage, L.L.C., to WHP Acquisition Company, LLC, Which Will Occur Indirectly as a Result of the Purchase of Western Hub Properties L.L.C. by WHP Acquisition Company, LLC, Pursuant to Public Utilities Code Section 854(a) and of Lodi Gas Storage, L.L.C. for Approval of a Secured Long-Term Financing Pursuant to Public Utilities Code Sections 816, 817, 818, 823 and 851.

Application 01-09-045  
(Filed September 28, 2001)

**ASSIGNED COMMISSIONER'S RULING  
SETTING ASIDE SUBMISSION AND REQUIRING JOINT APPLICANTS  
TO AMEND APPLICATION OR TO MOVE FOR ITS WITHDRAWAL**

Attached to this ruling is the September 13, 2002, letter I received from an officer of Aquila, Inc. (Aquila), one of the joint applicants in this proceeding. The letter details five areas in which changed facts warrant the filing of an amended application and suggests that the Commission direct such a filing. The letter quotes factual recitations in the draft decision and two alternate draft decisions that are no longer accurate because the underlying facts relied upon have changed. Specifically, the changed facts include:

- Major bond rating houses have downgraded Aquila's credit rating to junk bond or near junk bond status;
- Aquila's credit rating downgrade and the recent sale of its Katy gas storage facility will limit Aquila's ability to provide financial resources or management expertise to LGS. Accordingly, if the indirect transfer of control sought in this proceeding is granted, Aquila would not retain LGS, but would sell it;

- Aquila's affiliate, Aquila Merchant Services (AMS), has sold or is endeavoring to sell other major energy assets including its gas gathering, transportation, and processing facilities and its coal terminal.
- Aquila, itself, is endeavoring to exit the wholesale energy merchant business and has sold or is marketing for sale its international utility businesses;
- Aquila has sold various AMS assets, including gas storage assets and announced its intention to discontinue AMS' trading and risk management operations;

In addition, the letter discloses that the California Attorney General has notified AMS that it intends to file suit against an AMS subsidiary for alleged abuses in the wholesale electricity market.

In light of these serious representations, on or before October 4, 2002, Joint Applicants are directed to amend the application filed on September 28, 2001, as previously revised by the amendment filed on November 20, 2001 or in the alternative, to file a motion for withdrawal of the application and amendment.

If Joint Applicants elect to file an amended application, they shall correct all material facts to ensure that the application, as amended and verified, complies with Articles 4 and 9 of the Commission's Rules of Practice and Procedure. Joint Applicants also shall explain, with particularity, the public interest in approval of the change of control and any other authority sought by the amended application.

**IT IS RULED** that:

1. On or before October 4, 2002, Joint Applicants are directed to amend the application filed on September 28, 2001, as previously revised by the amendment filed on November 20, 2001 or in the alternative, to file a motion for withdrawal of the application and amendment.

2. If Joint Applicants elect to amend the application, they shall correct all material facts and shall explain, with particularity, the public interest in approval of the change of control and any other authority sought by the amended application, as further described in this ruling.

Dated September 17, 2002, at San Francisco, California.

/s/ LORETTA LYNCH

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Loretta Lynch  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Setting Aside Submission And Requiring Joint Applicants To Amend Application Or To Move For Its Withdrawal on all parties of record in this proceeding or their attorneys of record.

Dated September 17, 2002, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.